P. Dignall

28.4.99

STANDING COMMITTEE ON COMMUNITY AFFAIRS & ECONOMIC DEVELOPMENT

FINAL REPORT ON:

1) An Act to Amend the Workers Compensation Act (Bill No. 78) and the procedures, policies and practices of the Workers Compensation Board,

2) Police Commission Act (Bill No. 205 of the 1st Session of the 60th General Assembly), and,

3) Development of the Information Technology Sector on Prince Edward Island.

April, 1999

Mr. Speaker and Members of
the Legislative Assembly,

By resolution of the Legislative Assembly during the First Session of this General Assembly, the Standing Committee on Community Affairs and Economic Development was authorized to sit during the intersession (between the First and Second Sessions) and directed to receive public opinion and make recommendations on the following matters;

a) **An Act to Amend the Workers Compensation Act (Bill No. 78) and all procedures, policies and practices of the Workers Compensation Board;**

b) **Police Commission Act (Bill No. 205) and;**

c) **Resolution No. 68 as passed by the Legislative Assembly (with amendment) on June 2, 1998 respecting the potential of the information technology sector on Prince Edward Island.**

The following recommendation was adopted by the Legislative Assembly on 17 December, 1998;

> **Your Committee wishes to advise that it is in the process of completing public hearings on items a) and b) and requires additional time to deliberate on its final report to the Legislative Assembly.**
>
> **Accordingly,...your Committee recommends that the Legislative Assembly authorize the Committee to continue deliberations on these matters during the adjournment period (between the first and Second sittings of this, the 2nd Session of the 60th General Assembly). If so authorized, the Committee would make final report to the House on these matters at the continuation of this session in 1999.**

General:

Having received authorization from the Legislative Assembly, your Committee continued deliberations on the issues as noted above. We would like to sincerely thank all intervenors for their valuable contributions to the work of the Committee. Without the benefit of this information, the Committee would not be in a position to adequately identify that which it perceives to be the major

issues associated with the matters referred to it. Your Committee is not, in the text of this report, attempting to summarize or identify all issues raised by presenters as same is now part of the public record. Rather, the Committee will identify areas that, in its opinion, require the attention of Government. Having stated this, your Committee also wishes to note that all presentations made to it are now part of the public record and are available for inspection. Departmental representatives involved in the consideration of this report are invited to review the file in an effort to familiarize themselves with the issues brought before the Committee. This may prove beneficial in understanding the recommendations contained herein.

Your Committee is comprised of the following Members;

Jim Bagnall, Chair	Robert Maddix
Hon. Kevin MacAdam	Richard Brown
Hon. Mike Currie	Robert Morrissey
Elmer MacFadyen	Dr. Herb Dickieson
Norman MacPhee	Greg Deighan

An Act to Amend the Workers Compensation Act (Bill No. 78) and the procedures, policies and practices of the Workers Compensation Board

Public Hearing Process

In examining An Act to Amend the Workers Compensation Act (Bill No. 78) and the procedures, policies and practices of the Workers Compensation Board, the Committee advertised for public input and received response from many individuals and organizations. Eight public hearings were held with 27 presentations having been received. In addition, the Committee received letters expressing concern with various sections of the Workers Compensation Act (R.S.P.E.I. 1988, Cap. W-7) and detailing the specifics of their respective cases as heard by the Workers Compensation Board.

Your Committee feels that it is necessary to clarify the intent of its hearing process. Public hearings were held in an effort to identify problem areas of the Workers Compensation Act and the procedures, policies and practices adhered to by the Workers Compensation Board. In addition, the meetings were conducted to review the provisions of the proposed Bill No. 78, An Act to Amend the Workers Compensation Act. It appeared to the Committee early on that some intervenors were of the opinion that the Committee had the authority to re-hear cases already decided upon by the WCB. Such is not, and never was, the purpose for the Committee's work. Individual cases were heard by the Committee in an effort to understand the problem areas within the Workers Compensation Act and the procedures, policies and practices of the WCB. These cases served to illustrate problem areas that the Committee considered in the deliberations on this final report but the Committee wishes to caution, as it did throughout the hearings, that in no way could the Committee reverse an existing decision of the WCB. All Presentations were carefully considered and it is our hope that the recommendations contained herein will, if implemented, assist in the handling of future cases.

Recommendations

Functional Capacity Evaluations

A Functional Capacity Evaluation is a comprehensive test of a person's ability to perform work related tasks. It is designed so that a person's abilities and physical limitations can be noted and rated. The Committee has been advised that FCEs are carried out on approximately 4% of the workers on a Workers Compensation claim for earnings loss benefits.

1. Your Committee acknowledges FCEs as one of the most contentious issues identified during the public hearing process yet a comparatively small percentage (4%) of injured workers filing claims are ever the subject of one.

   Having carefully considered this matter, your Committee makes the following recommendations:

   1) A formal method of assessing an injured workers ability to return to the workplace is necessary in order to effectively assist that worker in attempting to re-enter the workforce and to aid, if necessary, in identifying the severity of the injuries sustained. Your Committee is of the opinion that the Functional Capacity Evaluation serves this purpose. While certainly not perfect, the FCE is an important part of the ability of the WCB to administer the provisions of the Workers Compensation Act as presently exists.

      Having stated this, your Committee makes the following recommendations;

      A) Subject to certain conditions, the FCEs should be administered only with the concurrence of the injured worker's family physician. If the family physician will not authorize the performance of an FCE on an injured worker, **the physician must provide written reason for refusal to provide authorization. If the physician refuses to provide the reasons in writing, the WCB may order a second and subsequent medical opinion until written opinion is received with respect to the ability of the injured worker to be subject of the FCE.**

      B) In ordering the conduct of an FCE, **and in the presence of conflicting medical opinion from family physicians, specialists and physiotherapists,** case managers must have available an independent medical review panel, comprised of medical practitioners, to make final and binding determinations on the conduct of an FCE. In addition, the medical review panel could also be empowered to hear cases where a determination has been made on a case by a case manager and, **for medical reasons**, the decision of

the case manager is being contested. In these cases, and on appeal of either the case manager or the injured worker, a medical panel could consider the case and make determinations that are final and binding.

C) FCE does not consider chronic pain nor, when testing is being conducted, is the level of medication that the injured worker is on appear to be taken into consideration when evaluating the results.

It is the Committees understanding that chronic pain is considered in some other jurisdictions in Canada and your Committee recommends that the Workers Compensation Board undertake immediately a review of the provisions covering chronic pain in the administering of FCEs in other jurisdictions and implement a system whereby chronic pain is considered as a compensable injury under the Workers Compensation System.

The Committee has additional comment on chronic pain later in this report.

Deeming

In a report dated May, 1998, this Committee recommended that the "...process known as "deeming" is re-examined by the Board at the earliest opportunity, and explained in more detail to workers who are effected by this process." In addition, the Committee recommended that the "Workers Compensation Board work with human resource agencies, schools and colleges that are involved in training and education; the objective being to find employment for people who have been "deemed" for jobs by the Board that are available on P.E.I."

2. A) After an FCE has been performed, injured workers, if "deemed" to have the ability to do certain types of jobs (for example, three different jobs), the Committee was informed that often the highest of the three wages was used in calculating a reduction in disability benefits based on the earnings loss provisions of the legislation.

Others have stated that the average of the three job wages are used in determining this rate. Your committee is concerned that there does not appear be a consistent policy in this regard and therefore recommends that the average wage for the jobs that an injured worker is deemed able to do be used in the calculation of benefits.

B) Concern was also expressed that injured workers' compensation was reduced automatically as a result of being deemed to have the ability to do certain types of jobs. No consideration is given to the ability of the injured worker to obtain employment in the field in which he/she has been deemed capable of

working and therefore the injured worker is automatically placed at an economic disadvantage and must endure considerable financial hardship through no fault of their own. This problem is especially acute in areas, and times of the year with a "seasonal" economy, of high unemployment.

It has been stated that the WCB is not an employment agency and your Committee must reluctantly accept this. However, the injured worker must be treated with sensitivity. When dealing with cases in which an injured worker has been deemed capable of doing certain jobs, consideration must be given to the ability of the injured worker to find employment in that particular field. Prince Edward Island has unique and fluctuating employment patterns and certain sectors are more robust at certain times of the year. For the WCB to operate in isolation of this fact would be doing a grave disservice to all injured workers attending before it.

In addition, WCB should endeavour to develop a comprehensive program to create incentives for employers to re-hire and/or re-train injured workers, including the use of work "easeback" programs and educational and other employer incentives to assist especially younger injured workers in re-entering the work force at a comparable level of pay.

Workers Compensation Board Personnel

3. It was asserted by a considerable number of intervenors that personnel at the Workers Compensation Board displayed insensitivity in dealing with the cases of injured workers.

Your Committee recognizes that the very nature of the work at the Workers Compensation Board is highly volatile and emotionally charged. Injured workers are often at one of the most vulnerable times of their lives yet WCB staff must set their emotions aside and administer the case pursuant to the Workers Compensation Act and the procedures, policies and practices of the WCB. During the performance of duties, WCB employees may appear to be "insensitive" toward the needs of their clients because they do not have the flexibility within the Workers Compensation System to creatively address unique problems.

Having stated this, it is imperative that Workers Compensation Board ensure that staff at the WCB are adequately supported and equipped with the skills and training necessary to function at a high level within the system. This is not to imply that the workers are not now performing their duties in a professional and competent fashion, as quite the contrary is the case. There does appear, however, to be room for improvement in the consistency of the decisions made, and in the handling, of cases. A database should be established with easy access for case managers to review

previous decisions of the WCB in similar cases (precedents). In addition, formal and comprehensive training in dealing with clients before assuming front line responsibilities must be enhanced.

Appeal Process

4. The Appeal Tribunal as expressed in the Workers Compensation Act does not represent a fair and independent process for disputed cases given that Section 56(26) of the Act permits the Board to overturn a decision of the Appeal Tribunal.

Your Committee acknowledges that the WCB has stated that it is in the process of addressing this unacceptable situation and recommends that the appeal process as envisaged by the Act be changed and that the decision of the Appeal Tribunal be final and binding.

In addition, the time frame for rendering appeal decisions is too long. Reasonable time frames should be legislated to ensure that injured workers do not endure undo hardship and stress as a result of cumbersome administrative procedures.

Workers Advisor

5. Your Committee has also been advised that the Board hires a lawyer to represent it at the Appeal level whereas injured workers are expected to hire their own lawyer to represent their interests. The Worker Advisor is made available to all injured workers to assist in cases and appeals, however, staff of the Workers Advisor program is small (two in total). Your Committee is concerned that this level of formal support for injured workers is not adequate and that consideration be given by Government and the WCB to increasing support to this Office in an effort to support injured workers at the appeal level.

Also, your Committee recommends that the Workers Advisor be renamed the Workers Advocate to more accurately reflect the role of this office.

In addition, your Committee has been informed that a judicial review of Appeal Tribunal decision is permissible in other jurisdictions but not under Prince Edward Island's Workers Compensation Act. If it is demonstrated that such a review is warranted, provision should be made to allow for same within the confines of the legislation.

Collateral Benefits

6. Section 42(1) & (2) provide the definition of collateral benefits. Some intervenors have asserted that it is unjust to deduct, dollar for dollar, Canada Pension from an injured workers disability claim.

Your Committee is concerned with the prospect of injured workers achieving the age of 65 and having disability claims cut off and finding themselves in a situation of not having contributed to Canada Pension since the time of their injury. This would leave the injured worker with only Old Age Security as income on attaining the age of 65.

Your Committee recommends that WCB immediately undertake an evaluation of the cost of paying CPP on behalf of injured workers. It is our understanding that equivalent deductions are already being taken from injured workers compensation but are not remitted to the CPP on behalf of the claimant. This recommendation would apply to claimants who are on a Workers Compensation claim for any period greater than six months.

Procedures and Policies Manual

7. Procedures and Policy Manual as devised by the WCB is not current and therefore is not serving a useful purpose in interpreting the procedures and policies of the WCB.

Immediate action should be taken to develop a clear and concise manual in easily understandable terms. Authors of the manual should be cautious in that the provisions contained therein do not go beyond the scope of the authority given the WCB via the Act nor should it be used to delineate or articulate Board direction not supported by legislation. Your Committee has been advised by the WCB that work on updating the manual has already commenced.

Chronic Pain

8. Workers Compensation Board does not compensate for chronic pain because of the difficulty of assessing the debilitating degree of this type of injury and the difficulty in determining the relevancy of the chronic pain to the workplace accident. Your committee agrees with numerous presenters that chronic pain must be considered in determining the level of compensation for injured workers where it can be clearly demonstrated that the chronic pain is a result of the workplace accident. Accordingly, your Committee recommends that the WCB immediately review the methods used in other jurisdictions to measure chronic pain and implement, immediately thereafter, chronic pain as a compensable injury.

Benefit Rates/ Assessment Rates

9. Your Committee has reviewed average employer assessment rates on Prince Edward Island and the maximum compensable earnings. After careful consideration, your Committee is of the view that neither should be revised at this time. Provision exists within the legislation for indexing and, without the benefit of thorough and complete actuarial evaluations, a recommendation to change either could seriously jeopardize the long term viability of the workers compensation system and the competitiveness of Island business.

Lump Sum Payments

10. Some intervenors expressed concern about lump sum payments vs. monthly disability payments. Your Committee is of the opinion that lump sum payments should be avoided if at all possible. It is in the best interest of all concerned that WCB attempt to provide long term income replacement in the event of a debilitating injury.

Special Funding Arrangements

11. Special funding arrangements (ie: SCI, CN, etc) were considered by your Committee. Some intervenors were of the opinion that these arrangements were not in the best interest of the workers compensation system on Prince Edward Island. Your Committee does not agree. All workers who are injured at the workplace should be treated equally and by allowing special funding arrangements, such is guaranteed. With a ceiling of $36,200, adequate basic coverage exists for Island workers. Provision exists within the legislation for employers to increase coverage for injured workers and the option always exists for workers to purchase private coverage if desirous of additional benefits in the event of an workplace injury.

In addition, it would be very difficult to attract any type of special project to Prince Edward Island if special funding arrangements were disallowed. For example, it would have been quite cost prohibitive for Strait Crossing Inc. to build Confederation Bridge in the absence of the ability to secure a special funding arrangement.

Processing Claims

12. Some intervenors expressed concern that the WCB took too long to process claims. Your Committee was advised that, once all information had been obtained, WCB processed the information within 27 days. We do not feel that this is an inordinate amount of time given the complexity of information that must be obtained by case managers.

Problems arise, however, when employers, employees and other parties involved in the claim fail to file the necessary reports. Delays obviously can result at no fault of

the WCB.

Follow-up by WCB could be improved. If a report is not filed by the employer within the three day time frame as detailed in the legislation, WCB should immediately contact the employer and request the report. If this action fails to produce results, a warning followed by a fine should be levied. In addition, it is not the role of the injured worker to pursue the employer to ensure that a report is filed. This should be done by WCB staff. If a person is injured in the workplace, all efforts should be on rehabilitation and returning that individual to the workplace...not putting them to work chasing reports that should already have been filed pursuant to the Workers Compensation Act.

It is your Committee's opinion that if employers were fined a couple of times, word would soon spread that delays in filing necessary reports would not be tolerated.

Private Investigators

13. Your Committee has been advised that it been past practice to employ the services of private investigators to monitor claimants that WCB has reason to believe are involved in fraudulent claims. In some cases, your committee was told that clients were videotaped and that access to these tapes was denied to the client.

Generally, if private investigators are to be used in investigating the legitimacy of claimants, access to this information must be granted to all parties involved. It is not acceptable to have a situation whereby videotaped evidence is used against an individual but access to this information is not granted to the individual.

An Act to Amend the Workers Compensation Act (Bill No. 78)

14. Your Committee, subject to the recommendations made in this report, submits the following observations with respect to Bill No. 78:

A) Your Committee Supports Section 1 of the Bill.

B) Section 2 of the Bill should be reviewed to ensure that the clause is written with sufficient clarity to ensure that the intended purpose is achieved. That is to state that a Workers Compensation claim should not be delayed as a result of disagreement over whether the accident should be covered under motor vehicle insurance or through WCB.

C) Subject to the recommendations contained in this Report, your Committee supports Section 3 of the Bill.

D) Your Committee Supports Section 4 of the Bill.

E) Subject to the recommendations contained in this Report, your Committee supports Section 5 of the Bill.

F) Your Committee supports Section 6 of the Bill.

G) Your Committee supports the intent Section 7 of the Bill, however, with specific reference to subsection (9), formalized methods for employer/employee input into the development of the research and safety programs should be outlined in the legislation.

H) Your Committee supports Section 8 of the Bill.

General

15. Your Committee suggests that WCB conduct an internal review of its administrative practices in an effort to identify and address problem areas (it is your Committee's understanding that this action has been initiated by the Board). For example, claimants should not be required to sign the back of a cheque each time declaring legitimacy of their respective claims or employees of WCB should be careful and professional in their dealings with claimants. This can be difficult as some claimants become very familiar with WCB staff, yet, employees should be ever mindful that it is an client/business relationship and not a personal one, even though private and personal information is being exchanged.

16. Professional counselling services are needed for injured workers to ensure that they have adequate support at one of the most difficult times of their lives. WCB should explore the most effective way of providing these services to their clients, keeping in mind that agencies currently exist on P.E.I. offering this type of service.

17. Meaningful follow-up on long term claimants should be conducted by WCB every six months to ensure that WCB is doing all that it can do, within its mandate, to assist the client.

18. Nothing presently exists within the Act to deal with a deteriorating medical conditions as a result of an injury. Re-assessment procedures should be established to take into account deteriorating conditions in determining or readjusting benefits levels.

19. Your Committee recommends that this Committee meet with the representatives of the Workers Compensation Board within 6 months of the adoption of this report by the Legislative Assembly. Expected at that time would be an update on progress made by the WCB on the implementation of the recommendations contained herein.

Police Commission Act

On April 28, 1998, the Police Commission Act, a Private Members Bill, was introduced in the Legislative Assembly by Richard Brown, MLA, Charlottetown - Kings Square.

Generally, the Bill proposes a P.E.I. Police Commission. The Commission would be appointed from among Members of the Human Rights Commission. The Commission would be empowered to hear appeals from municipal police committees. The Minister may also direct the Commission to inquire into, investigate, and report upon matters related to the extent of crime, and standards of law enforcement and policing in the province. The bill would also require every municipality who has a police force to establish a police committee and to adopt a police code of conduct, duty and discipline. Also proposed is a formal process for dealing with complaints respecting police officers

Generally, Police Commission Act (Bill 205) received mixed support during the public hearing process. It was stressed to your Committee that the principles as detailed in the legislation are already, in various forms, managed by municipalities. In addition, methods for dealing with complaints against municipal police departments are now in place. Your Committee however, noted some concern in that complaints filed against police departments are handled internally by the police department against which the complaint is filed. Your Committee recommends that an alternate process of appeal to an independent body (perhaps the Department of the Attorney General) should be established to ensure that all disputes against police departments would have a fair an equitable conclusion with a hearing of appeal by a completely independent and impartial individual or body.

Your Committee recommends that the Office of the Attorney General investigate various procedures used in appeals across Canada and implement a procedure as soon as possible.

Information Technology Sector Development

As noted above, during the 1st Session of the Sixtieth General Assembly, the Legislative Assembly passed the following resolution;

WHEREAS the information technology industry is one of the fastest growing industries in Canada and the world;

AND WHEREAS there is a shortage of information technology workers provincially, nationally and worldwide;

AND WHEREAS the information technology sector has many dimensions including communications, information systems and software development;

AND WHEREAS the province's telephone system has been digitized as a result of a cooperative effort between Island Telephone Company and the previous and current provincial governments;

AND WHEREAS a number of technology firms that have been established within the province in recent years;

AND WHEREAS other provinces are aggressively promoting the development of the information technology sector within their respective provinces;

AND WHEREAS information technology represents a potential opportunity for the Island economy;

THEREFORE BE IT RESOLVED that the Standing Committee on Community Affairs and Economic Development investigate and explore potential directions that may encourage the further development of the information technology sector within Prince Edward Island;

AND BE IT FURTHER RESOLVED that the said Committee report back to the Assembly at its next sitting.

Having received this direction, the Committee met with Hon. Mitch Murphy, Minister of Technology and Environment and Mr. Des Lecky of Technology PEI. The Committee discussed generally the direction being taken by the Province in the development of the information technology sector. Specifically, items discussed included;

- the information age generally and knowledge based economies

- an overview of the IT industry in Canada and on Prince Edward Island

- Focus of the PEI Government in developing IT and the organizational and Infrastructure foundation P.E.I. has developed in positioning itself to cultivate this sector

- Key initiatives undertaken to date

- Community based IT programs

- Education and workforce IT strategies

- Intergovernmental initiatives

- Principles for growth and policy direction

Your Committee would like to thank the Minister and Mr. Lecky for providing it with a comprehensive overview of the provincial government's approach to developing the information technology sector. We are pleased to note that since the passage of Resolution 68, a new Department of Technology has been created. This serves to demonstrate the importance of aggressively pursuing opportunities in the ever expanding technology industry sector.

Respectfully submitted,

Jim Bagnall

Jim Bagnall, MLA
Chair, Standing Committee on Community Affairs and Economic Development